

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Proposed Annex B to DCID 1/14 Appeals Procedures

FROM:

C/SECOM

EXTENSION

NO.

SECOM-D-167/81

DATE

25 June 1981

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

D/ICS

6/30

Jm

2.

DD/ICS

6/29

CA

3.

DDCI

1 - For your information
and coordination

3 - For your approval

4.

5.

6.

7.

8.

9.

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13.

14.

15.

DIRECTOR OF CENTRAL INTELLIGENCE

Security Committee

SECOM-D-167/81

25 June 1981

STAT

MEMORANDUM FOR: Deputy Director of Central Intelligence

VIA: Director, Intelligence Community Staff

FROM:

[redacted]
Chairman, Security Committee

SUBJECT: Proposed Annex B to DCID 1/14
Appeals Procedure

*see covering
note. Should
be an NP/B
matter.*

1. Action Requested: Your concurrence and approval for the issue of Annex B.

2. Discussion: On 10 April 1981, [redacted] the former Security Committee Chairman, and [redacted] Associate General Counsel, met with you and addressed three major points concerning proposed appeals procedures for SCI access.

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a. The SCI Intelligence Community has already decided in favor of appeals procedures and in fact each component of the Community has instituted its own set of procedures.

b. Any court test of procedures currently in use would in part revolve around the extent to which an individual has been afforded due process. Any evidence that certain elements in the SCI Community gave more elaborate procedures to a person denied access than was given in a case before the court would definitely undercut the position of the agency in court.

c. The personal appearance described in Annex B to DCID 1/14 is set forth in such a way as to provide total flexibility to the Determination Authority in each agency on a case-by-case basis.

At the conclusion of that meeting, you indicated your willingness to approve Annex B if you could be assured that it has been reviewed adequately by the Security Committee and that senior Security officials saw a need for such procedures. I have, therefore, reviewed the lengthy process which led to the development of Annex B in the form in which it now appears.

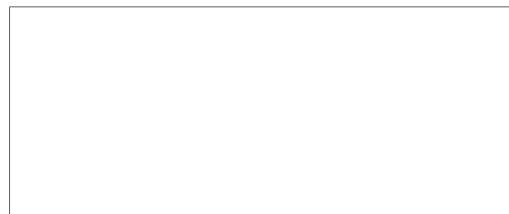
As a result of a working group recommendation to adopt a set of common appeals procedures as an annex to DCID 1/14, the matter was brought to the attention of the Security Committee itself. After considerable discussion, the Security Committee principals originally voted ten to three in favor of Annex B. Based on your recent instructions, the Committee principals were asked to reconsider their votes and, if dissenting, to submit new memoranda explaining the reasons for their objections. Consequently, the NSA representative, one of the dissenting principals, changed his vote and now endorses Annex B. Eleven Committee principals therefore concur in the proposal as written.

Two Security Committee principals continue to withhold concurrence. The OSD representative contends that the proposed Annex B procedures would impose an unacceptable administrative and financial burden on the military services. As an alternative, OSD proposes that each agency issue its own procedures independently with minimum due process requirements. The Navy's dissent is based solely upon objections to any written provision for an appellant's personal appearance before a determining authority or his designee.

Security Committee consideration of this annex has persisted for three years and the consensus which has resulted, as reflected in the final vote, demonstrates the strength of the Security Committee's commitment to these appeals procedures.

3. Staff Position: Annex B is ready for final approval and issue. A draft copy of Annex B is enclosed as attachment 1. Also attached is a memorandum from the DCI General Counsel which addresses a number of concerns regarding Annex B (see attachment 2). Finally, the dissenting memoranda from OSD and Navy are included as attachment 3.

4. Recommendation: That you approve the issue of Annex B to DCID 1/14.



Attachments

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SUBJECT: Proposed Annex B to DCID 1/14
Appeals Procedure

STAT

APPROVED:

Deputy Director of Central Intelligence

Date

Distribution:

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- 1 - DDCI w/att.
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Annex B

DCID 1/14 Appeals

Policy

1. This annex establishes common appeals procedures for the denial or revocation of access to Sensitive Compartmented Information (SCI) by entities of the Intelligence Community after adjudication pursuant to the provisions of DCID 1/14. This annex is promulgated pursuant to Executive Order 12036*, Executive Order 12065, Section 102 of the National Security Act of 1947, and National Security Council Intelligence Directive No. 1. For the purposes of this annex, all references to DCID 1/14 include the basic document and all of its annexes. Any person who has been considered for initial or continued access to SCI pursuant to the provisions of DCID 1/14 shall, to the extent provided below, be afforded an opportunity to appeal the denial or revocation of such access. This annex supersedes any and all other practices and procedures for the appeal of the denial or revocation of SCI access. This annex shall not be construed to require the disclosure of classified information or information concerning intelligence sources and methods, nor shall it be construed to afford an opportunity to appeal prior to the actual denial or revocation of SCI access. In addition, the provisions of DCID 1/14, this annex, or any other document or provision of law shall not be construed to create a property interest of any kind in the access of any person to SCI. Further, since the denial or revocation of access to SCI cannot by the terms of DCID 1/14 render a person ineligible for access to other classified information solely for that reason, the denial or revocation of SCI access pursuant to the provisions of DCID 1/14 and this annex shall not be construed to create a liberty interest of any kind.

Applicability

2. This annex applies to all United States Government civilian and military personnel, as well as any other individuals, including contractors and employees of contractors, who are considered for initial or continued access to SCI. This annex does not apply to decisions regarding employment and shall not be construed to affect or impair Public Law 88-290 or the authority of any entity to effect applicant or personnel actions pursuant to Public Law 88-290, Public Law 86-36, or other applicable law.

*/ Executive Order 12036 superseded Executive Order 11905 as of 24 January 1978.

SCI Access Determination Authority

3. Adjudications for access to SCI shall be made in accordance with DCID 1/14 by a Determination Authority designated by the Senior Intelligence Officer (SIO) of each entity. Access to SCI shall be denied or revoked whenever it is determined that a person does not meet the security standards provided for in DCID 1/14.

Procedures

4a. Persons shall be:

- (1) notified of the denial or revocation of SCI access,
- (2) notified that they may request to be provided the basis for such denial or revocation, and/or
- (3) afforded an opportunity to appeal

whenever the Determination Authority of any entity, in the exercise of his discretion, deems such action in any given case to be clearly consistent with the interests of the national security.

b. Any person who is given notification and afforded an opportunity to appeal pursuant to subparagraph a. above may, within 45 days of the date on which the person is notified of the basis for denial or revocation of SCI access, submit a written appeal of that denial or revocation to the Determination Authority and request an opportunity to make a personal appearance to elaborate on any information provided in the written appeal. The written material submitted for consideration may include any information which the person believes will assist the Determination Authority in reviewing the case.

c. If the person requests the opportunity to make a personal appearance, and after reviewing the written appeal the Determination Authority concludes that there remain unresolved issues which may be resolved through a personal appearance, then the person will be given the opportunity to appear personally before the Determination Authority or his designee to elaborate on any written information provided and to answer any additional questions. The person may be accompanied by a representative at that time.** In appropriate

**/ Except as provided below, the United States Government shall not be responsible for travel expenses of the person or representative incident to appearing before the Determination Authority. Whenever an SCI adjudication is reversed on appeal, the adjudicating entity shall, to the extent permitted by applicable law, reimburse the person for the person's travel expenses incident to appearing before the Determination Authority.

cases it may be necessary to condition the participation of such representative upon the representative being security approved for exposure to certain classified information prior to the personal appearance. Ordinarily, the personal appearance will be scheduled 30 days after receipt of a personal appearance request.

d. After a further review of the case, based upon a written appeal and any interview conducted pursuant to subparagraph c. above, the person will be notified of the decision of the Determination Authority.

e. If the Determination Authority reaffirms a denial or revocation of access, the person may request a final review of the case. In that event, the SIO, or his designee, shall personally review the case and exercise his discretion pursuant to the provisions of DCID 1/14, and shall inform the person of his decision, which shall be final and unreviewable.